

SERVED: August 3, 1994

NTSB Order No. EA-4222

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 21st day of July, 1994

DAVID R. HINSON,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
v.)	Docket Nos. SE-9248
)	SE-9249
EUGENE A. BIELECKI,)	SE-9244
JOSEPH A. CARPENTER,)	SE-9246
EDWARD R. DAHLIN,)	SE-9245
GARY P. HERDEN,)	SE-9247
DANIEL J. HOGBERG, and)	
CHARLES A. NICHOLLS,)	
Respondents.)	

OPINION AND ORDER

The Administrator has appealed from the written initial decision of Administrative Law Judge Jimmy Coffman, issued on January 11, 1993.¹ Respondents have withdrawn their notice of appeal from the law judge's decision. The law judge found: that each respondent had violated 14 C.F.R. 61.59(a)(2) and

¹The initial decision is attached. It was based, as explained therein, on the record developed at a hearing held earlier by a law judge, since retired.

135.293(b); that five of the six respondents had violated 14 C.F.R. 135.343; that four respondents had violated § 135.293(a); and that two had also violated § 135.21(a).² The law judge, however, reduced the sanction from revocation, as ordered by the Administrator, to varied certificate suspensions, with most of the suspension periods waived.³ We grant the appeal and reinstate all six orders of revocation.

Respondents, all airline transport pilot certificate holders, were employed as pilots by North East Jet, Inc. (NEJ). NEJ was the successor entity to M.T. Associates, Inc. (MT). Respondents Dahlin and Herden were principals in both entities, and all other respondents but Mr. Bielecki had worked for MT as well. See initial decision at 5. Respondents argued that, with the changeover in name only, competency check and training requirements could be "carried over" from one company to the

²We grant the Administrator's motion to withdraw this last charge, against respondents Dahlin and Herden. The remaining provisions are reproduced in the initial decision, footnotes 2-5.

Section 61.59(a)(2) prohibits intentionally false or fraudulent entries in any record, logbook, or report that is required to be kept, made, or used to show compliance with any requirement for issuing or exercising certificates or ratings. Section 135.343 requires that crewmembers in Part 135 operations complete appropriate initial and recurrent training. Section 135.293(a) and (b) further require that pilots have yearly competency checks (a flight check and a written or oral test) in the aircraft type being operated.

³Specifically, the law judge ruled as follows:

Bielecki	6-month suspension, waived.
Carpenter	9-month suspension, waived.
Dahlin	12-month suspension, all but 30 days waived.
Herden	12-month suspension, all but 30 days waived.
Hogberg	9-month suspension, waived.
Nicholls	12-month suspension, waived.

other. Id. at 18. The Administrator alleged, and the law judge found, among other things, that NEJ's records contained clearly and intentionally false statements, signed by all respondents, about when and how flight and ground competency training, initial or recurrent emergency drills, and/or hazardous materials training had taken place. As a result, the law judge also found that respondents acted as crewmembers in Part 135 operations without having the necessary training and/or competency checks.⁴

Although the law judge found these violations, he also found that respondents' various training completed while at MT would be considered to have met regulatory and manual requirements for NEJ. Apparently thus believing that much of the Administrator's order elevated form over substance (see id. at 18-19), he reduced the sanctions considerably.⁵ It is against this sanction reduction that the Administrator's appeal is largely directed.

The record is replete with discussion of instances of respondents attesting to training and proficiency checks that were not given at the time or to the extent certified.

⁴The law judge rejected many of respondents' challenges to applicability of the rules, some of which were frivolous. For example, respondents argued that statements were not false because they had signed blank forms and therefore were not attesting to any falsehood, but only blank paper. As the law judge found, this is no answer. Initial decision at footnote 56. Indeed, it shows a serious and callous disregard for the importance of accurate record keeping. See discussion, infra.

⁵The law judge does not directly explain the basis for his sanction reduction. He states only that "[o]ne simply cannot ignore some of the factors that mitigate the imposition of the ultimate revocation sanction sought by the Administrator." Initial decision at 28.

Respondents do not challenge the facts found by the law judge in this regard. Looked at in the light most favorable to them, at best they believed that MT training met all substantive requirements and that NEJ compliance or FAA waiver sought and granted (see initial decision at footnote 52) was unnecessary effort. While we cannot agree with the law judge's acceptance of respondents' arguments on this issue and his consequent failure to affirm all the Administrator's charges, we need not address the question as the violation findings the law judge did make require that we reinstate the Administrator's sought sanction.

We agree with the Administrator that the facts as found here by the law judge do not warrant a sanction less than revocation for any of the respondents. In reaching this conclusion, we need look no farther than precedent involving intentional falsification of records.

As the Administrator notes, we have long held that findings of intentional falsification generally compel a conclusion that a pilot is not qualified to retain his certificate. See, e.g., Administrator v. Cassis, 4 NTSB 555, 557 (1982), reconsideration denied, 4 NTSB 562 (1983), aff'd, Cassis v. Helms, Admr., FAA, et al, 737 F.2d 545 (6th Cir. 1984).⁶ See also Administrator v.

⁶We said there:

[A]ny logbook entry which in any way illustrates compliance with any certification or rating requirement in 14 CFR 61 is material for purposes of a Section 61.59(a)(2) violation. The maintenance of the integrity of the system of qualification for airman certification, which is vital to aviation safety and the public interest, depends directly on the cooperation of the participants and on the reliability

Morse, NTSB Order EA-3766 at 12 ("An individual who does not ensure the scrupulous accuracy of his representations in records on which air safety critically depends cannot be said to possess the necessary care, judgment, and responsibility."). We see nothing here that would warrant a different result.

Respondents argue that the law judge's sanction reduction is warranted in the record to compensate respondents for "jeopardy of one's airman's privileges for over five years." Respondents view the law judge's decision as being "in the sense of giving credit for 'time served.'" Reply at 2. Respondents, however, have served no "time." They have had the full use of their certificates during the course of this proceeding, and the delay has not been shown to have harmed them in any way, were that even a factor we would take into account.

In light of our conclusion to reinstate the orders of revocation based on the findings of fact made by the law judge, we need not address the Administrator's other claims on appeal that the law judge failed to make certain findings of fact and law that were supported by the evidence.

(..continued)

and accuracy of the records and documents maintained and presented to demonstrate compliance.

ACCORDINGLY, IT IS ORDERED THAT:

1. The Administrator's motion to withdraw a portion of the complaints is granted;
2. The Administrator's appeal is granted and the initial decision modified as set forth in this opinion; and
3. The revocation of respondents' airline transport pilot certificates shall begin 30 days from the date of service of this order.⁷

HALL, Acting Chairman, LAUBER, HAMMERSCHMIDT and VOGT, Members of the Board, concurred in the above opinion and order.

⁷For the purposes of this order, respondents must physically surrender their certificates to an appropriate representative of the FAA pursuant to FAR § 61.19(f).